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**INDIGENOUS PEOPLE AND CANADIAN COURTS:
ADVOCACY, EVIDENTIARY AND ETHICAL ISSUES**

LAW476H1F

UNIVERSITY OF TORONTO, FACULTY OF LAW

2017-2018 Academic Year

Instructor: Katherine Hensel

CASEBOOK

(VOLUME I of II)

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Indigenous People and Canadian Courts: Advocacy, Evidentiary and Ethical Issues
(LAW476H1F)

Week 1: September 11 – Introduction and Overview

Readings:

Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada – Preface (pages V – VI); Introduction (pages 1 – 22); The Legacy (pages 135 – 182) (for both Week 1 and Week 2)

Week 2: September 15 (Friday – deemed Monday) – Context

Readings:

United Nations Declaration on the Rights of Indigenous Peoples

TRC 94 Calls to Action

Week 3: September 18 – Litigating Aboriginal and Treaty Rights Cases (s. 35)

Readings:

Darlene Johnston, “Lo, How Sparrow Has Fallen: A Retrospective of the Supreme Court of Canada's Section 35 Jurisprudence” (2005) in Julia Bass, W. A. Bogart & Frederick Zemans, eds., *Access to Justice for a New Century: The Way Forward*, Toronto: Law Society of Upper Canada, pp. 197-248 (To be distributed)

Woodward & Company, *Tsilhqot'in Nation v British Columbia and Canada*, webpage, available online:

http://www.woodwardandcompany.com/?page_id=87.

Week 4: September 25 – Evidentiary Issues (Part I)

Readings:

Mitchell v. M.N.R., [2001] 1 SCR 911 (focus on paras 1 – 65)

Week 5: October 2 – Evidentiary Issues (Part II – Oral Evidence)

Readings:

Evidentiary issues—oral tradition evidence (Continuing Legal Education Society of British Columbia)

Mitchell v. M.N.R., [2001] 1 SCR 911 (paras 27 – 40)

R v Delgamuukw, [1997] 3 SCR 1010 (headnote; paras 1 – 14, 78 – 108)

Xeni Gwet'in First Nations v. British Columbia, 2007 BCSC 1700 (paras 131 – 196) (*Tsilhqot'in* Trial Decision)

Week 6: October 16 – Criminal Justice

Readings:

TRC Report – Volume 5, Chapter 5: A denial of justice (pages 218 – 256)

R v Gladue, [1999] 1 SCR 688

R v Ipeelee, [2012] 1 SCR 433 (headnote; paras 80 – 87)

R v Anderson, 2014 SCC 41

R v Armitage, 2015 ONCJ 64

R v Pelletier, 2016 ONCJ 628

Week 7: October 23 – Child Welfare

Readings:

TRC Report – Volume 5, Chapter 1: Child Welfare: A system in Crisis (pages 11 – 60)

Richard, Kenn, Chapter 9: On the Matter of Cross-Cultural Aboriginal Adoptions, Putting a Human Face on Child Welfare, 2007, Chapter 9, pp 189 – 202

Saskatchewan v STC Health & Family Services Inc, 2016 SKQB 236

Week 8: October 30 – Public Inquiries and Coroner’s Inquests (Part I – Sampson Inquiry; Ipperwash Inquiry)

Readings:

Sampson Inquiry

Ipperwash Inquiry – Executive Summary (pages 1 – 77)

Week 9: November 13 – Public Inquiries and Coroner’s Inquests (Part II – Missing and Murdered Indigenous Women)

Readings:

TRC Report – Volume 5 – Legacy (Overrepresentation of Aboriginal People among victims of crime – pages 257 – 269)

Oppal Inquiry: The Missing Women Commission of Inquiry (Executive Summary – pages 4 – 22; 108 – 112)

RCMP Report – Missing and Murdered Aboriginal Women: A National Operational Overview

Tracey Lindberg, “Violence Against Indigenous Women and the Case of Cindy Gladue” (March 30, 2015)

Week 10: November 20 – Access to Justice and Advanced Costs

Readings:

United Nations Human Rights Council, “Access to justice in the promotion and protection of the rights of indigenous peoples”

R v Sayers, 2017 ONCJ 77

Week 11: November 27 – Indigenous Law

Readings:

TRC Report – Volume 6, Chapter 2: Indigenous law: Truth, reconciliation, and access to justice (pages 45 – 79)

Christie, Gordon, "Culture, Self-Determination and Colonialism: Issues Around the Revitalization of Indigenous Legal Traditions", *Indigenous Law Journal*, Volume 6, Issue 1

Borrows, John, *Canada's Indigenous Constitution* (2010) (Chapters 1 and 6 – pages 1 – 22; 137 – 176) (To be distributed)

Napoleon, Val and Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions Through Stories" (2016) *McGill LJ* 61:4

Week 12: December 4 – Role of the Legal Profession and Conclusion

Readings:

TRC 94 Calls to Action

Indigenous People and Canadian Courts: Advocacy, Evidentiary and Ethical Issues
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